IN THE

SUPREME COURT OF THE UNITED STATES

August Special Term
1958

JOHN AARON, et al.,	)	
	)	
Petitioners	)	
	)	
vs.	)	Misc. No.
	)	
WILLIAM G. COOPER, et al., Members of The Board of Directors of the Little Rock, Arkansas Independent School District, and VIRGIL T. BLOSSOM, Superintendent of Schools,	)	
	)	
Respondents.	)	

MOTION FOR LEAVE TO FILE BRIEF FOR PETITIONERS

Now come the petitioners and respectfully move for leav

to file the Brief for Petitioners hereto annexed.

Respectfully submitted,

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Attorneys for Petitioners

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Jack Greenberg
Irma Robbins Feder
William Taylor
William Coleman, Jr.

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BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinions of the Court of Appeals for the Eighth Circuit and the District Court for the Eastern District of Arkansas are not reported. Copies of these opinions and the orders of both courts are filed herewith as Petitioners' Appendix.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sections 1651 and 2106; and the general supervisory powers of this Court over lower federal courts.

QUESTION PRESENTED

Whether a decree of the District Court approved by the Court of Appeals requiring gradual integration of public schools, which plan has been in effect for a year, may be suspended by order of a District Judge or order of Court of Appeals staying its mandate after having reversed said order of the District Judge.

STATEMENT OF THE CASE

The facts in this case are adequately set forth in the opinion of the Court of Appeals and are therefore not set forth here. Two days after said opinion was filed, on August 20, 1958, petitioners filed a motion in the United States Court of Appeals for the Eighth Circuit requesting that the mandate in said case be issued forthwith. On the following day respondents filed a motion for stay of issuance of the mandate and on the same date, August 21, 1958, the United States Court of Appeals, without allowing the petitioners the five days' opportunity to file a brief in opposition as provided by Rule 18 (b) of the Rules of the United States Court of Appeals for the Eighth Circuit, granted respondents' application for stay of the mandate in said cause for a period of thirty days from said date and further ordered that, if

within the period of thirty days it receives notice from the Clerk of the Supreme Court that an application for certiorari has been filed, the stay is continued until said application is finally disposed of. Copy of said stay is set forth in Appendix to this brief.

On August 22, 1958, petitioners filed their application For Vacation Of Order of Court of Appeals For Eighth Circuit Staying Issuance of Its Mandate, For Stay of Order of District Court of Eastern District of Arkansas and For Such Other Orders As Petitioners May Be Entitled To.

On August 25, 1958, this Court issued an order for a Special Term called to hear argument of said application.

ARGUMENT

THE STATUS-QUO OF SCHOOL DESEGREGATION PURSUANT TO COURT ORDER SHOULD NOT BE DISRUPTED EITHER BY ORDER OF THE DISTRICT COURT OR STAY OF MANDATE BY THE COURT OF APPEALS.

The Court may take judicial notice of the fact that the next school term at Little Rock Central High School is to commence on September 8. In denying the petition for writ of certiorari in order to permit the Court of Appeals to consider the issues involved, this Court stated that it had "no doubt that the Court of Appeals will recognize the vital importance of the time element in this litigation, and that it will act upon the application for a stay or the appeal in ample time to permit arrangements to be made for the next school year."

But in the present posture of these proceedings, despite an opinion of the Court of Appeals deciding the right of petitioners to continue in nonsegregated schools, petitioners will be relegated back to segregated schools for at least a year. Thus, respondents have effectively secured the relief they originally sought--a suspension of desegregation for an undetermined duration.

Petitioners' right to attend unsegregated schools has long since been settled, Aaron v. Cooper, 143 F.Supp. 855 (E.D. Ark 1956), aff'd 243 F2d 361 (8th Cir. 1957) and petitioners have in fact attended an unsegregated school for one year. The only issue in this case is whether respondents are entitled under the circumstances presented here to an order suspending the rights of petitioners for any period of time. The court below has effectively decided this issue by issuing a stay. If that stay is allowed to stand until September 8, 1958, it will for all purposes constitute a final disposition of the only issue in this case.

I

While a federal court has power to issue or deny stays of its own judgments, this Court has consistently defined and limited that power by the application of certain standards. Virginian R. Co. v. United States, 272 U.S. 658,672; United States v. State of Ohio, 291 U.S. 644; Lucy v. Adams, 350 U.S. 1; United States v. United Liquor Corp. 1 L. ed. 2d 32 (1956); Tureaud v. Board of Supervisors of Louisiana State Univ., 346 U.S. 882. Considerations governing the issuance of a

stay were set forth in detail in the Virginian case. There a carrier sued to restrain the enforcement of an ICC order abolishing discriminatory rates. A three-judge district court refused to issue the injunction and gave judgment for defendant, but stayed the enforcement of the ICC order pending appeal. This Court vacated the stay and held that a judgment of this kind creates a presumption of its own correctness, a presumption which ordinarily entitled the prevailing party and the public to the benefits the order was intended to secure. Mr. Justice Brandeis, writing for the court, stated at 573:

> In this class of cases [where a final decree has been rendered denying an injunction] an appeal bond can rarely indemnify fully even private parties to the litigation for the loss of the benefits of which the stay deprived them; and the public would usually be left wholly remediless. To justify granting the stay after a final decree sustaining the Commission's order, it must appear either that the district court entertains a serious doubt as to the correctness of its own decision; or that the decision depends upon a question of law on which there is conflict among the courts of the several circuits; or that some other special reason exists why the order of the Commission ought not to become operative until its validity can be considered by this court. 1/

1/ On similar facts, this Court in United States v. Ohio, 291 U.S. 644, citing the Virginian case, vacated a stay, even before the appeal was heard. See also: Breswick v. United States, 1 L. ed. 2d 1510, 1513.

More recently, in United States v. United Liquor Corp., 1 L. ed 2d 32, 33 (1956), Mr. Justice Reed wrote in chambers:

> Weighing the economic harm and the "fear" of future irreparable injuries flowing to defendants from the existence of the decree, during the pendency of their direct appeal to this Court, against the public detriment which would result from a continuation of unlawful price fixing, the motion for a stay is denied. Cf. Yakus v. United States, 321 US 414, 440, 441, 88 L. ed. 834, 857, 858, 64 S. Ct. 660.

The English precedents similarly hold that where there are no serious doubts about the correctness of a decision a stay will be denied where its imposition would prejudice the prevailing party[2] and that an important consideration in the decision of whether a stay should be granted is the desirability of preserving the status quo of the parties.[3]

2/ See A. G. v. Murdock (1852) 21 L.J. Ch. 694; 19 L.T. O.S. 173, L.JJ ("I do not see that the rights of those in whose favor a decree has been twice pronounced should be delayed."); Penn v. Bibby (1866) L.R. 3 Eq. 308; 36 L.J. Ch. 277; 15 W.R. 192 ("It is a patent matter, and it is of very great importance (for the patent has only two years to run) that there should be no such delay as need be occasioned if I suspended the decree.")

3/ Boskell v. Whitworth (1871) 19 W.R. 804 L. JJ ("If there is a bona fide intention to take the opinion of the Court upon it, it is not usual that things should remain otherwise than in statu quo."); Attorney General v. Munro, 11 L.T.O.S. 197; 12 Jur. 318, L.C. (1848) ("By enforcing the injunction, the Court would be turning one clergyman and one congregation out one week to introduce another clergyman and another congregation who may be displaced the next week. It will be best that the services of the defendant should be continued some short time longer, until the appeal has been decided.")

In the instant case, the Court of Appeals entertained no doubts as to the correctness of its own decision. In fact, it stated categorically:

> An affirmance of "temporary delay" in Little Rock would amount to an open invitation to elements in other districts to overtly act out public opposition through violence and unlawful means.

Nor can the stay be justified by balancing the harm to the parties. Indeed, the Court of Appeals itself, in deciding this case on the merits, held:

> Mindful as we are that the incidents which occurred within Central High School produced a situation which adversely affected normal educational processes, we nevertheless are compelled to hold that such incidents are insufficient to constitute a legal basis for suspension of the plan to integrate the public schools in Little Rock. To hold otherwise would result in "*** accession to the demands of insurrectionists or rioters ***", Strutwear Knitting Co. v. Olson, 13 F.Supp. 384 at 391, and Faubus v. U.S., 254 F. 2d 797 at 807, and the withholding of rights guaranteed by the Constitution of the United States.

The only issue before this Court is whether respondents are entitled, to a suspension of desegregation already in progress. If Judge Lemley's order remains in effect until the opening of school petitioners will be returned to segregated schools for at least one year and respondents will have secured the relief they sought. The rights of those petitioners who are scheduled to graduate from high

school next year will be permanently and effectively nullified.[4/]

Certainly the stay issued by the court below cannot be justified as an exercise of the traditional function of preserving the status quo pending appeal, for, the issuance of the stay achieved the opposite effect. It disrupted the status quo by excluding petitioners from the schools they attended during the past year. The refusal of the district court to stay its order accomplished the same result.

In the area immediately under consideration this Court has twice ruled that the grant or denial of a stay should not be allowed to defer clear constitutional rights to nonsegregated education. Lucy v. Adams, supra; Tureaud v. Board of Supervisors of Louisiana State University, supra. In the Lucy case, a motion to vacate the suspension of and to reinstate the order of the United States District Court for the Northern District of Alabama, enjoining state university officials from denying petitioner's admission solely on account of race or color was addressed to Mr. Justice Black as Circuit Justice for the Fifth Circuit. In a per curiam opinion this Court, after reciting the facts, held that "[t]he motion is granted and the injunction is reinstated to the extent that it enjoins and restrains the respondent and others designated from denying these petitioners, Autherine Lucy and Polly Ann Myers, the right to enroll in the University of Alabama and pursue

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4/. The considerations cited in the Virginian case which militated against the stay are of even greater force here where petitioner is not protected even by the posting of an appeal bond, which the State of Arkansas, because it is a state, need not deposit.

courses of study there. Sipuel v. University of Oklahoma, 332 U.S. 631, 92 L. ed 247, 68 S Ct 299; Sweatt v. Painter, 339 U.S. 629 94 L. ed 1114, 70 S Ct 848; McLaurin v. Oklahoma State Regents for Higher Education, 339 U.S. 637, 94 L ed 1149, 70 S Ct 851" [pp 1-2]

In the Tureaud case, the relator had been ordered admitted to Louisiana State University by the United States District Court for the Eastern District of Louisiana. The Court of Appeals reversed and refused to stay its judgment. An order of this Court stayed the judgment of the Court of Appeals pending final disposition of the petition for writ of certiorari filed in this Court. It will be noted that the petition was later granted, 347 U.S. 971.

There can be no question of the power of this Court to stay judgments or vacate stays of judgment of lower federal courts, United States v. United Liquor Corp., 1 L.ed 2d 33 (1956); Lucy v. Adams, 350 U.S. 1; Tureaud v. Board of Supervisors, 346 U.S. 886; Rosenberg v. U.S. 346 U.S. 273, 279; Scripps-Howard Radio v. Federal Communication Comm. 316 U.S. 4,9-10; United States v. Ohio, 291 U.S. 644; Virginian R. Co. v. United States, 272 U.S. 658, 672; In the Matter of Classen 140 U.S. 198, 208. This Court also has authority to issue a stay suspending an order of an inferior tribunal, pending appeal from the decision of an intermediate court. See Omaha and Council Bluff Street Ry Co. v. Interstate Commerce Commission, 222 U.S. 582 (suspending order of the I.C.C. pending appeal); Virginian R. Co. v. United States 272 U.S. 658, 670

Thus it is clear that the procedural device of granting or denying a stay cannot be employed where the result will be to delay or nullify the exercise of clearly determined rights. This Court has frequently exercised its authority to prevent such unjust results and, petitioner submits, nowhere is the exercise of this Court's authority more imperative to preserve constitutional rights than in the instant case - if the stay order is permitted to stand and Judge Lemley's order remains in force petitioners' rights will be effectively destroyed, the damage will be irreparable and the order of a Federal Court will in fact "be whittled away."

CONCLUSION

WHEREFORE, it is respectfully submitted, petitioners' application should be granted.

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CERTIFICATE OF SERVICE

THURGOOD MARSHALL, attorney for petitioners herein, hereby certifies that copies of the attached Brief for Petitioners were delivered to Richard C. Butler, Esq., in the District of Columbia on this date.

THURGOOD MARSHALL

Dated: _____ day of August 1958.